

THE POLITICS OF CHINESE LAND: PARTIAL REFORM, VESTED INTERESTS, AND SMALL PROPERTY¹

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Abstract

This paper investigates the evolution of the Chinese land regime in the past three decades and focus on one question: why has the land use reform succeeded in the urban area, but not in the rural area? Through asking this question, it presents a holistic view of Chinese land reform, rather than the conventional “rural land rights conflict” picture. This paper argues that the so-called rural land problem is the consequence of China’s partial land use reform. In 1988, the Chinese government chose to conduct land use reform sequentially: first urban and then rural. It was a pragmatic move because it would provoke much less resistance. It also made local governments in China the biggest beneficiary and supporter of the partial reform. However, a beneficiary of partial reform does not necessarily support further reform because of the excessive rents available between the market of urban real estate and the government-controlled system of rural land development and transfer. On the other hand, Chinese farmers and other relevant groups have no voice or power in the political process of the reform, which makes it

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difficult for the central government to achieve an agenda that balances the interests of all relevant parties. Nevertheless, Chinese farmers have challenged the existing system by forming a huge small-property market to claim their interests in rural land, which counteracts the goals of the central and local governments and has led to adaptive policy changes. This case study of Chinese land reform provides a richer account of the political process of evolution of property rights.

Introduction

This paper investigates the evolution of the Chinese land regime in the past three decades and focus on one question: why has the land use reform succeeded in the urban area, but not in the rural area? Through asking this question, it presents a holistic view of Chinese land reform, rather than the conventional “rural land rights conflict” picture.²

Demsetz presents a classic theory on the evolution of property rights, in which new forms of property rights will emerge if the benefit is greater than the cost of creating them.³ Levmore emphasizes the influence of interest groups in the evolution of property rights,⁴ but does not conduct in-depth investigation on the mechanism through which interest groups influence the evolution of property rights nor how to address them in this context. In an unrelated article, Levmore does discuss interest groups in detail—interest groups might lead to overregulation in incremental reforms because people who have been under regulation would like to see others regulated, even if this

² See, e.g., Eva Pils, *Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan*, 19 COLUM. J. ASIAN L. 235 (2005).

³ Harold Demsetz, *Toward A Theory of Property Rights*, 57 AM. ECON. REV. PAPERS & PROC. 347 (1967).

⁴ Saul Levmore, *Two Stories about the Evolution of Property Rights*, 31 J. LEGAL STUD. S421 (2002); Saul Levmore, *Property's Uneasy Path and Expanding Future*, 70 U. CHI. L. REV. 181 (2003).

extension of regulation is inefficient.⁵ He does not discuss whether and how his thesis could be applied to the evolution of property rights.

Interest groups could have been highlighted in Heller's analysis of commercial real estate reform in Russia because most of the holders of various sticks of property rights to the Moscow stores were actually government agencies and other government-affiliated institutes.⁶ But Heller downplayed this side of the story and focused on the fragmentation of property rights in general, which might be attributed to his agenda to develop a general theory on property rights rather than investigate the political process of the Russian property reform. Post-communist property reform provides an excellent chance for us to observe how interest groups and the political structure in general influence the evolution of property rights. However, legal scholars have rarely pursued this path. This paper aspires to bridge this gap.

In other disciplines, mainly political science and transitional economics, there has been a major debate on the choice of path in post-communist transition: shock therapy or partial reform.⁷ Some scholars argue that shock therapy is better than partial reform to overcome the old communist interests. Others argue that partial reform could foster social groups that benefit from reform and would support further reform. In particular, Qian and others call China's partial reform "a reform without losers."⁸ I posit that the current state of China refutes their argument and proves that the debate has been missing the point. The biggest barrier to reform, at least in the Chinese context, is not the interest groups rooted in the old communist regime, but the interest groups fostered by the partial reform.

⁵ Saul Levmore, *Interest Groups and the Problem with Incrementalism*, 158 U. PA. L. REV. 815 (2010).

⁶ Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 HARV. L. REV. 621 (1998).

⁷ Joel Hellman, *Winners Take All*, 50 WORLD POL. 203 (1998).

⁸ Lawrence J. Lau, Yingyi Qian, & Gerard Roland, *Reform without Losers: An Interpretation of China's Dual-track Approach to Transition*, 108 J. POL. ECON. 120 (2000).

They benefited from the partial reform and would prefer to extend the period of the partial reform. This is the problem China is facing today, and this problem is particularly acute in land use reform in China.

This paper argues that the so-called rural land problem is the consequence of China's partial land use reform. In 1988, the Chinese government chose to conduct land use reform sequentially: first urban and then rural. It was a pragmatic move because it would focus the reform and provoke much less resistance. It also made local governments in China the biggest beneficiary and supporter of the partial reform.⁹ However, a beneficiary of partial reform does not necessarily support further reform because of the excessive rents available between the market of urban real estate and the government-controlled system of rural land development and transfer. The central government, in particular its agency in charge of land administration (the former Bureau of Land Administration, which has been elevated to the Ministry of Land and Resources (the "MLR")), also has interests embedded in the current regime with the explicit goal of preserving agricultural land. In contrast, Chinese farmers and other interested groups have no voice or power in the political process of the reform, which makes it difficult for the central government to achieve an agenda that balances the interests of all parties.¹⁰

⁹ Land sales revenue became an important source of Chinese local governments. In some Chinese cities, half of the local government finance is from land sales revenue. Thus, it is not that particular individuals or constituencies benefited from land sales, or at least not directly. Of course, there are beneficiaries of the government-dominated rural-urban land conversion, including real estate developers, and the department of land administration, which is able to maintain its budget and importance within the government system due to the existence of such a system. In general, land sales revenue has been in the *public* pocket of local governments, rather than in particular individuals or constituencies. The revenue has been used in maintaining the operation of the government and in various city public infrastructure projects.

¹⁰ The influence of the partial reform on farmers is complicated. On one hand, it does give local governments incentives to grab farmers' land, which would not be so strong if there was no such a reform. On the other hand, thanks to the reform, local governments can afford to pay higher compensation to farmers than they could otherwise. In a more general way, urban land use reform was crucial to China's market

However, this is not to say that a country, even without a democratic political structure, would necessarily be trapped in the partial reform equilibrium. In the China case, Chinese farmers challenged the existing system by forming a huge small-property market, through which social groups disadvantaged by the partial reform, mainly Chinese farmers and members of the middle-and-low income urban population, present their interests and display their capacity to counteract the goals of the central and local governments. This has led to adaptive policy changes. Recent news shows that Chinese land reform is moving in a direction that would address Chinese farmers' concerns, though much work is needed to unify the small-property market and the legal real estate sector.

My historical investigation builds not only on my systematic examination of national laws and landmark resolutions of the Chinese Communist Party ("CCP"), but also on government documents generated in their drafting processes, ordinances, regulations, notices, communications between the central government and local governments, and memoirs of retired national leaders and senior government officials who participated in the reform. This paper is organized as follows. Part I introduces the dual land ownership system in China. Part II and Part III investigate the urban land use reform and rural land use reform, respectively. Part IV explores how Chinese farmers have promoted policy changes through their illegal land uses. Part V concludes.

I. Dual Land Ownership and Rural-Urban Land Conversion

Article ten of the current Chinese constitution reads that urban land is owned by the state and rural land is owned by collectives (except those owned by the state according to law). This is what dual land ownership means. *The*

transition and has greatly facilitated China's urbanization process, from which farmers have benefited a lot. One example would be job opportunities for farmers who work in cities as migrant workers.

most important character of this dual land ownership is the dominating role of the state landowner over the collective landowner, with the former's monopoly over rural-urban land conversion. Through this dissertation, "urban land" and "rural land" are legal terms regardless of the physical characteristics of the land. Rural land can be near the city center, such as that in some intra-city villages, and urban land can be far away from the city center, such as those remote villages that were requisitioned by the government in recent years. In the following section, I discuss the origin and structure of dual land ownership in China.

A. State Ownership of Urban Land

The undisputed moment at which private land ownership in China was abolished was the passage of the 1982 Constitution, which, for the first time in the history of the People's Republic of China, declared that urban land is state-owned without exceptions. Although several letters solicited from the populace on the draft of the 1982 Constitution addressed the state-ownership of urban land, this clause faced little dispute within the amendment committee.¹¹ The 1982 Constitution recognized the *de facto* demise of private land ownership caused by the Cultural Revolution for two reasons. First, in the ideological struggle between market and planned economies, the latter still prevailed. The orthodox Marxist understanding of property was strictly followed and, thus, there was no need to deny the nationalization of urban real estate in the Cultural Revolution. It was not until two years later in 1984 that the CCP finally achieved consensus on building a commercial economy with planning (*you jihua de shangping jingji*). Second, it was widely regarded that state ownership of urban land would serve the purposes of state-dominated economic development, as demonstrated by the proposal to nationalize rural land described in Part IB.

¹¹ Cheng Xueyang (程雪阳), <pinyin here> (城市土地国有规定的由来) [*The Origin of State Ownership of Urban Land*], <pinyin here> (炎黄春秋) [YAN HUANG CHUN QIU MAG], No. 6, 2013,

B. Collective Ownership of Rural Land

CCP's promise to reallocate landlords' land to millions of peasants contributed to the civil war victory over the Nationalist Party in 1949. The Common Program of the Chinese People's Political Consultative Conference (which was passed in September 1949 and served as the temporary constitution of the People's Republic of China until 1954) made a system of "peasant land ownership" a goal of the new Communist government and protected the private property of "workers, peasants, the petty bourgeoisie and the national bourgeoisie."¹²

However, this did not last long. The CCP began to promote the establishment of farmers' coops (*hezuohua*) in rural areas in 1951, which led to the establishment of the people's commune system in 1958.¹³ The people's commune consisted of three echelons: the commune, the production brigade and the production team.¹⁴

Since the early 1980s, the Household Responsibility System (hereinafter "HRS") has replaced the people's commune system as the main rural land institution. Under the HRS, the collective should contract collectively owned land to individual households. Individual households as contractors of rural land are free to use the contracted land for agriculture. In the past three decades, the contract rights have gradually matured to quasi property rights due to the extension of the contract period from 15 years to "permanency" (*changjiu bu bian*)¹⁵ and the establishment of measures to

¹² 《中华人民共和国共同纲领》第三条 [THE COMMON PROGRAM OF THE CHINESE PEOPLE'S POL. CONSULT. CONF., Article 3].

¹³ 陈锡文等：《中国农村制度变迁 60 年》，人民出版社 2009 年版[Chen Xiwen et al., *Six Decades of the Evolution of Chinese Rural Institutions*, PEOPLE'S PUBL'G HOUSE 10-16 (2009).]

¹⁴ See Peter Ho, *Who Owns China's Land? Policies, Property Rights and Deliberate Institutional Ambiguity*, 166 CHINA QUART. 394, 404-405 (2001).

¹⁵ See 中国共产党第十七届中央委员会第三次全体会议公报（2008 年 10 月 12 日中国共产党第十七届中央委员会第三次全体会议通过）[*Gazette of Third Plenary Session of the 17th CCCC, promulgated Oct. 12, 2008.*]

protect rural households' contract rights from the interference of rural collectives.¹⁶ Rural land is categorized into three types: residential land; agricultural land, and public construction land. The permitted uses of different categories of rural land are strictly controlled, and farmers are prohibited from diverting land to any other urban use – which encompasses any use not listed among the three categories above.

C. Structure of Chinese Local Government and Rural-Urban Land Conversion

In 1982, the Standing Committee of the NPC passed the Regulations on the Requisition of Land by the State for Construction ("RRLSC"). Article Two of the Regulations said that:

When the state conducts economic, cultural and national defense construction and social public affairs, it should requisition collective-owned land according to this regulation. All direct or covert buying or renting of land from rural people's communes and production brigades by any unit shall be forbidden. Rural people's communes and production brigades shall not

¹⁶ The last nationwide reallocation of rural land happened in 1998. In 2002, the central government passed the Rural Land Contract Law ("RLCL"), which stipulates that farmland tenure security must be maintained for at least 30 years. The third plenary session of the seventeenth Party congress also decided that the current land contract system "should not be changed for a long time." (*changjiububian*) Thus under the current law and policy, village collectives have no right to change or revoke the contract. Under very exceptional situations, such as natural disaster, adjustment of the land contracts should be agreed by two-thirds majority of villager representatives approved by the local government. See, e.g., Article 27 of RLCL. Farmers can seek conciliation by local governments, special arbitration, and litigation for rural land contract disputes. See Article 51 of RLCL. However, failure to allocate land to the newly increased population often induced conflicts among village members if the above law and policy were strictly implemented. Administrative land reallocations then still continued in some villages to accommodate demographic changes in these places. Land requisition is another reason for land reallocation. According to a 2005 seventeen-province survey, 30.3% of the villages carried out land reallocation after 1998. See Ellickson, *infra* note 24; Zhu Keliang et al., *The Rural Land Question in China: Analysis and Recommendations Based on a Seventeen-Province Survey*, 38 N.Y.U. J. INT'L L. & POL. 761, 794 (2006); see also Hui Wang, et al, *To Reallocate or Not: Reconsidering The Dilemma in China's Agricultural Land Tenure Policy*, 28 LAND USE POL'Y 805 (2011).

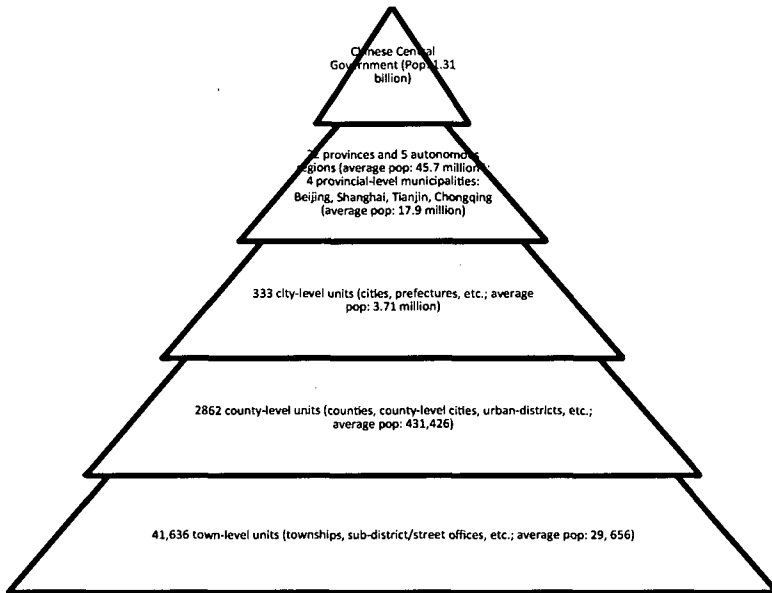
participate in the business operations of any enterprise or institution by contributing land as shares.

It was clear from the RRLSC that all land use must be consistent with the State's economic plan. Rural land was supposed to be used for agriculture and the livelihood of farmers, and it could only be used for "construction" if it was approved under the economic plan. State requisition is the only legal way of converting collectively owned land, which could only be used for agricultural and related uses, to state-owned land, which could be used for various construction projects.

Which level of the government represented the state in these types of conversions? According to Article Seven of the RRLSC, the city and county-level governments were responsible for selecting sites and requisitioning land for specific projects. Land requisition was subject to the approval of the provincial or central government, and decisions were made according to the size of the land requisitioned. City and county-level governments were able to approve requisition of land of no more than three *mu* of arable or garden land, ten *mu* of forestry or grassroots land, and twenty *mu* of other kinds of land. Although often subject to the approval of upper level governments, city and county-level governments were the actual managers of the state ownership of land.

Why were county and city governments responsible for land management? In contrast with the U.S., China is a unitary state, meaning that all powers of local governments are delegated by the central government. Generally speaking, Chinese local governments are divided into four levels: province, city, county, and township, as shown in the following graphic:

Figure 1.1. The Structure of the Chinese Government



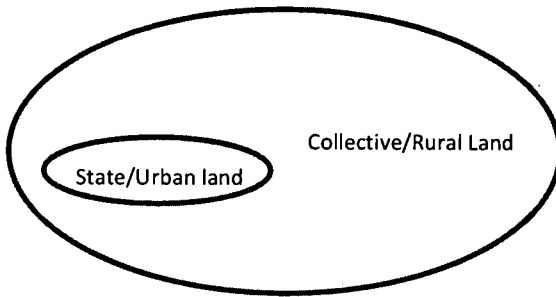
Source: Xu Chenggang, *The Fundamental Institutions of China's Reform and Development*, Journal of Economic Literature 2011, 49:4, 1076-1151, 1084.

Chinese provinces tend to be too large as an economic development unit and townships tend to be too small. Cities and counties, on the other hand, tend to be of an efficient scale for economic management. In China's economic reform process, cities and counties have become the administrative units that actually manage the economy.¹⁷ Naturally, city/county governments are the real managers of land within their jurisdictions. In the U.S., land use power is also within the hands of the city or county governments.

Taking a Chinese city/county as an example, the structure of land ownership is as shown in the following graphic:

¹⁷ 张五常：《中国的经济制度》，中信出版社 2009 年版[Steven N.S. Cheung, *The Economic System of China*, CITIC PRESS GROUP (2009)] (concerning inter-county competition in China).

Figure 1.2. Dual Land Ownership in China



However, the boundary between urban land and rural land is not static. City/county governments can change this boundary by requisitioning rural land and converting it to urban land. The two kinds of land ownership, state ownership of urban land and collective ownership of rural land, are not equal. Managers of rural land (the people's communes) were under the leadership and control of the county governments. The organizational hierarchy of the Chinese government and the county and city governments' legal power to requisition rural land for urban construction made it easy for city and county governments to encroach upon the collective ownership of rural land.

The former people's commune consisted of three echelons: the commune, the production brigade and the production team.¹⁸ The people's communes were under the direct control of counties or city governments. The reforms initiated in 1978 by Deng Xiaoping dismantled the communes and granted individual households the right to use the land. Generally, the township (*xiang/zhen*) replaced the commune, the village (*cun*) replaced the production brigade, and the villagers' group (*cunmin xiaozu*) replaced the production team, as shown in the following diagram.¹⁹ However, the political

¹⁸ See Ho, *supra* note 15, at 404-5.

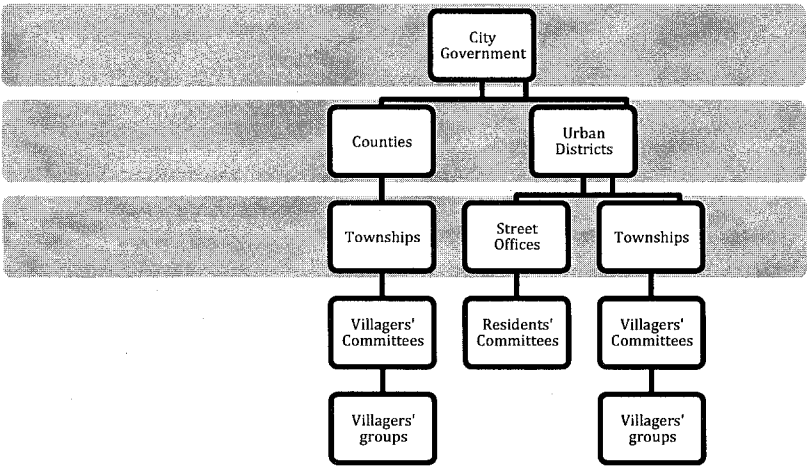
¹⁹ *Id.* at 405.

structure of the local government did not change fundamentally. Townships were still under the direct control of the city/county governments. Village-level self-governance organization, under the leadership of the party branch, also remains a puppet of the local government.²⁰

Moreover, at the policy level, city and county governments represent the interests of all units and individuals under their jurisdictions in the national political arena, including the rural sector. Villagers do not have direct access to the political process of policy making. Even in exceptional situations where the villagers' leaders are selected to serve as members of the NPC, their voices and influence are subject to and inferior to that of city and county government leaders.

Thus, politically speaking, Chinese farmers still do not have their own "autonomous organizations" that can represent their interests in national policy making. Their rights to use the land contracted to them are easily encroached upon by the city and county governments' power to requisition land. The relationship between owners of urban land and rural land is the key to understanding the land use reform discussed in the following parts.

Figure 1.3. Chinese Government Structure under the City-Level after 1978



²⁰ See Shitong Qiao, *Governing the Post-Socialist Transitional Commons*, 24 COLO. J. INT'L ENVTL. L. & POL'Y 115, 146-148 (2012).

II. URBAN LAND USE REFORM

Urban land use reform was initiated and captured by Chinese city governments. A urban land use market provided Chinese city governments with the financial resources urgently needed for urban construction and public investment, and has been a main engine for urbanization and economic development in China. Chinese local governments' pursuing of financial interests forced the central government to concede most of the land revenue to them and has deeply shaped the Chinese land regime.

A. The Creation of Land Use Rights: From Shenzhen Experiment to Constitutional Amendment

Before 1979, land was controlled by the state and used by various government units for free in accordance with Marxist principles stating that the price mechanism was inapposite after abolishing private property. However, with the implementation of the reform and opening-up policies, state ownership of land must be given a richer understanding than under Marxist orthodoxy.

The cities at the frontier of reform and opening up blazed a trail of land use reform. On December 31, 1979, the Director of the Shenzhen City Construction Commission signed a contract with a Hong Kong investor, according to which the Shenzhen city government contributed land, the Hong Kong investor financed the land development and the Hong Kong investor shared in a fixed percentage of the profits.²¹ On December 5, 1980, the Shenzhen City Construction Commission signed the first "land use fee" contract with a Hong Kong investor, which included the essential contents of today's standard contracts of assignment of state-owned land use rights between local governments and real estate developers, including the term (30

²¹ 冯杰:《深圳土地管理二十年》,《深圳特区报》2006年6月22日[Jie Feng, *Two Decades of Shenzhen Land Administration*, SHENZHEN SEZ DAILY, June 22, 2006], http://www.szpl.gov.cn/xxgk/gzdt/zwdt/200908/t20090825_46190.html.

years in this contract) and price of the land use (HKD 5000 per square meters).²²

Law-making and the practice of land use fees discussed above could be considered a prologue because of their limited scale, which ultimately served as the beginning of a norm cascade.²³ Shenzhen, the first special economic zone ("SEZ") of China, went a step further. In November 1981, Shenzhen created its own regulation of land administration, which also required domestic investors within Shenzhen, rather than just foreign investors, to pay one-time land use fees.²⁴

However, without a land market, the standard land use fee was arbitrarily fixed by law and was applied to all construction projects.²⁵ Users who valued the land most did not have an opportunity to reveal their willingness to pay higher prices. Shenzhen, as the first city to charge land use fees, first felt the constraints of the land use fee. After studying the crown land sales in Hong Kong²⁶ carefully, the Shenzhen government sensed the money-generating power of a land market. It wanted to sell land, and it created a slogan in response to the CCP's call to build a "commercial economy with planning." The slogan was: "No land market, no complete commercial economy." This reform faced an ideological challenge from Marxism: should a socialist country that abolished private property sell land? In response to this

²² *Id.*

²³ See Robert C. Ellickson, *The Market for Social Norms*, 3 AM. L. & ECON. REV. 1-49 (2001); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 903-968 (1996).

²⁴ 《深圳经济特区土地管理暂行规定》（广东省人大常委会，1981年12月24日）[Interim Regulations on Land Administration in Shenzhen Special Economic Zone, art. 19] (promulgated by The People's Cong. of Guangdong Province, Dec. 24, 1981).

²⁵ 中华人民共和国城镇国有土地使用权出让和转让暂行条例（中华人民共和国国务院令 第55号，1990年5月19日）[Interim Regulations on Land Administration in Shenzhen Special Economic Zone, art. 16] (promulgated by St. Council Order No. 15, May 19, 1990).

²⁶ See Roger Nissim, *Land Administration and Practice in Hong Kong* (2d ed. 2008).

challenge, reformers separated land use rights from land ownership. A local reformer checked the classics by Marx and Engels page by page and cited words from Engels as support. Engels wrote that, “[A]bolishing private ownership of land does not require abolishing land rents; rather it requires submitting land rents to the society.”²⁷ Thus selling land use rights would not challenge state land ownership in China and would allow the state to utilize land rents.

Shenzhen eventually held the first public auction of transferrable land use rights in the history of PRC on December 1, 1987, in direct conflict with the then effective Land Administration Law (“LAL”) and Constitutional Law.²⁸ The public defiance led to the legal authorization of transfer of land use rights by the People’s Congress of Guangdong Province (the province where Shenzhen was located) on January 3, 1988, and more importantly, the Chinese Constitutional Amendment that allows the transfer of land use rights on April 12, 1988,²⁹ and a similar amendment to the LAL on December 29, 1988.³⁰

The 1988 amendments of the Constitution and LAL removed the legal barrier against selling land use rights for local governments. On May 19, 1990, the State Council promulgated detailed rules governing the sales of land use rights from the government and the transfer among land users, i.e., the Interim Regulations of the People’s Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in

²⁷ Feng, *supra* note 22.

²⁸ *Id.*

²⁹ 《中华人民共和国宪法修正案》（1988年4月12日第七届全国人民代表大会第一次会议通过，1988年4月12日第七届全国人民代表大会第一次会议主席团公告第八号公布施行）[See Article Two of the 1988 Constitutional Amendment].

³⁰ 《全国人民代表大会常务委员会关于修改<中华人民共和国土地管理法>的决定》（1988年12月29日第七届全国人民代表大会常务委员会第五次会议通过，1988年12月29日中华人民共和国主席令第十二号公布自公布之日起施行）[1988 LAL Revision] (promulgated by Nat’l People’s Cong., Dec. 29, 1988).

the Urban Areas, which is still in effect today.³¹ It confirms that the transfer of land use rights is the responsibility of city and county governments.

B. The Central-Local Distribution of Land Sales Revenue

The 1988 amendments were silent as to the distribution of land sales revenue. However, as land use reform was implemented by city governments, city governments initially controlled land sales revenue and could use them for their own purposes. This situation soon changed when the central government, as the ultimate owner of state land, promulgated a notice on May 12, 1989, providing that 40% of the land sales revenue should be submitted to the central government.³²

Local governments, who not only tried to hide their land sales revenue from the central government, but also threatened to stop land use reform if they gained little from it, resisted this promulgation. Due to the large number of cities engaging in land use reform, the central government had no way of knowing how much land sales revenue each city had collected. As a result, one year later on September 26, 1990, the Chinese Ministry of Finance promulgated another notice that stipulated that the central government would return its share of land sales revenue to local governments for urban construction.³³ The reasons for the central government's concession were clear: "to promote the transfer of state-owned land use rights and to consider the

³¹ 中华人民共和国城镇国有土地使用权出让和转让暂行条例（中华人民共和国国务院令 第 55 号，1990 年 5 月 19 日）[the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas].

³² 国务院关于加强国有土地使用权有偿出让收入管理的通知（国发[1989]38 号，1989 年 5 月 12 日）[Notice on Strengthening Management of Revenue from Transfer of State-Owned Land Use Rights] (promulgated by the State Council, May 12, 1989).

³³ 《关于国有土地使用权有偿出让收入上缴中央部分有关问题的通知》（（90）财综字第 111 号，1990 年 9 月 26 日）[Ministry of Finance Notice on the Revenue of Transfer of State-Owned Land Use Rights Submitted to the Central Government] (promulgated by the Ministry of Finance, Sept. 26, 1990).

practical situation of local governments.”³⁴ A more fundamental change came on December 15, 1993, when the State Council promulgated a decision that re-divided the tax power of the central government and local governments in an effort to benefit the central government’s finances.³⁵

Taxes since then have been divided into state taxes and local taxes. The central government established its own tax collection agencies all over the country. Land sales revenue, which had proved hard to collect without the assistance of local governments, was completely conceded to local governments.³⁶

This was not the end of bargaining over the distribution of land sales revenue between the central and local governments.³⁷ On April 15, 1997, in a notice from the CCCCPC and the State Council on the preservation of agricultural land, the central government decided that *all* revenue from the increased construction land (i.e. urban construction land converted from rural land) should be submitted to the central government and used in the development of land for agricultural use.³⁸ It hoped that by decreasing the incentive for local governments to requisition agricultural land, it could

³⁴ *Id.*

³⁵ Guanyu shixing fenshui zhicai zhengguanli tizhi de jue ding (关于实行分税制财政管理体制的决定)[Decision on Implementing Tax Division in Finance Administration] (promulgated by the St. Council, Dec. 15, 1993, effective Jan. 1, 1994).

³⁶ *Id.*

³⁷ Throughout this research, “local government” is used as distinct from “central government,” and can refer to any level of the provincial, city, county, or township government. The most relevant local governments in this research are the city- and county-level governments. I use “local government” in a general way when there is no need to specify or the behaviors of the city/county governments cannot be distinguished from those of the lower levels of the government; otherwise I specify the particular level of the government according to the specific situations.

³⁸ Guanyu jinyibu jiaqiang tudi guanli qieshi baohu gengdi de tongzhi (关于进一步加强土地管理切实保护耕地的通知)[Notice on Strengthening Land Administration and Preserving Agricultural Land] (promulgated by the St. Council and the Central Comm. of the CCP, Apr. 15, 1997, effective Apr. 15, 1997).

achieve its goal of agricultural land preservation.³⁹ This move by the central government led to another round of bargaining between central and local governments in the 1998 LAL revision.

The 1998 LAL revision was the direct product of the above notice. However, in the first draft of the LAL revision (*songshen gao*), which was submitted by the SBLA to the Bureau of Legal Affairs of the State Council (“BLA”) on August 18, 1997, the proposal was changed so that *forty percent* of the revenue from rural-urban land conversion should be submitted to the central government. The reason was that, after the SBLA submitted the first draft to the BLA, the latter solicited comments from local governments, other departments of the central government, legal experts, and other groups. Under the prevalent opposition of local governments, the BLA made the above change.⁴⁰ The BLA then submitted the revised draft to the National People’s Congress, which publicized the draft for public comments. Again, according to the official interpretation of the 1998 LAL, edited by Bian Yaowu, the then deputy director of the Committee of Legal Affairs of the NPC (“CLANPC”), “The ratio of the central-local distribution of the revenue from increased construction land was quite controversial in the discussions.”⁴¹ Local governments suggested that the ration submitted to the central government should be lowered for various reasons. Nevertheless, in the third meeting of the Standing Committee of the Ninth National People’s Congress on June 24, 1998, the CLANPC suggested keeping the ratio at 40% for the purposes of

³⁹ *Id.*

⁴⁰ Zhang Qingyong (张清勇), *Zongxiang caizheng jingzheng taojiahuanjia yu zhongyang-difang de tudi shouru fencheng – dui woguo 20 shiji 80 niandai yilai tudi shouru de kaocha* (纵向财政竞争、讨价还价与中央-地方的土地收入分成——对我国 20 世纪 80 年代以来土地收入的考察) [*Vertical Fiscal Competition, Bargaining, and the Land Revenue Sharing Relationship between Central and Local Governments in China*], <http://www.unirule.org.cn/xiazai/200711/69.pdf>.

⁴¹ *Zhonghua renmin gongheguo tudi guanlifa fashiyi* (中华人民共和国土地管理法释义) [INTERPRETATION OF PRC LAND ADMINISTRATION LAW] (Bian Yaowu [卞耀武] et al. eds., Falü Chubanshe [法律出版社] [Legal Press] 1998).

more efficient use of urban land and the preservation of agricultural land.⁴² However, in the fourth meeting two months later, this ratio was finally lowered to 30% as a result of suggestions from some local governments and members of the Standing Committee of the NPC.⁴³ The 1998 LAL revision proved that local governments had substantial control and bargaining power over the distribution of land revenue. This is because the central government is forced to rely on local governments, mainly city and county governments, to manage state-owned land, which gives local governments great leverage in formulating national land laws and policies. With regard to daily land administration, the central government also faces frequent challenges from local governments.

C. Regulating Local Governments' Land Use Power

Even before the 1988 constitutional amendment that allowed the transfer of land use rights, illegal land use by local governments was a problem. Local governments always had incentives to requisition more land than they needed because land could be requisitioned at relatively low prices. This problem became more significant after the legal authorization of a land use market in 1988 that provided local governments more incentives to requisition land due to the profits from land sales.

The central government's control over land use was confronted with two serious challenges. First, though China allowed the transfer of state-owned land use rights, it did not abolish the land assignment system, in which different kinds of government agencies and institutes, including state-owned enterprises, could obtain land for free. Once there was a market for land use rights, all these players could profit by transferring their rights to use the state-owned land. They continued to apply for state-owned land under the guise of their own uses, but such application was actually for future profit-making transfers. Second, as collective-owned land could be requisitioned and

⁴² Zhang, *supra* note 60.

⁴³ *Id.*

converted to state-owned land, various government agencies requisitioned rural land without clear authorization. City and county governments did not bother to seek approval from upper level governments in many situations.

When the value of land use rights was recognized and there was no clear definition and enforcement of state land ownership, a rush to grab and develop state-owned land occurred. State-owned land includes land that was originally collectively owned by farmers and then requisitioned by the government. This resulted in the aforementioned real estate bubble as well as a rapid decrease in the amount of agricultural land.

In numerous notices and regulations, the SBLA emphasized that it must “strengthen the high monopoly of transfer of land use rights,” (*“jia qiang dui tu di chu rang de gao du long duan”*) and “approval of land requisition with only one pen” (*“yi zhi bi shen pi”*).⁴⁴ The SBLA devoted many resources to building a system that centralized the control of the use of state-owned land within the government system and did not tolerate land use outside of the system it was endeavoring to build. This has greatly impacted the rural land use reform discussed here.

III. RURAL LAND USE REFORM

Chinese farmers’ spontaneous transfer of rural land has occurred at the early stage of China’s market transition, but a rural land use market would jeopardize the local governments’ monopoly over land supply. Comparing with the local governments’ strong bargaining power in the making of central-

⁴⁴ Guanyu jinyibu jiakuai tudi shiyong zhidu gaige de tongzhi (关于进一步加快土地使用制度改革的通知) [Notice on Further Promoting Land Use Reform] (promulgated by State Bureau of Land Administration, June 25, 1992, effective June 25, 1992); Guanyu yange yifa shenpi tudi de jingji tongzhi (关于严格依法审批土地的紧急通知) [Emergency Notice on Strictly Approving Land Use] (promulgated by State Bureau of Land Administration, July 31, 1992, effective July 31, 1992); Guanyu dui fangchan kaifa gongsi jian shangpinfang chushou xingwei de dingxing ji falü shiyong wenti de qingshi de dafu (关于对房产开发公司建商品房出售行为的定性及法律适用问题的请示的答复) [Reply on Legal Issues Regarding Commercial Real Estate Development] (promulgated by State Bureau of Land Administration, Oct. 16, 1992, effective Oct. 16, 1992).

government laws and policies, farmers could only be represented rather than represent their own interests, and were basically voiceless. As a result, spontaneous market transactions did not lead to legalization of rural land use transfer, but “the strictest land use control system in the world,” emphasizing the government monopoly over rural-urban land conversion.

A. Rural Land Transfer Is Nothing New

The first decade of China’s economic reform began with the establishment of the HRS, which liberated households from the people’s communes and greatly increased agricultural productivity. The need for better housing came immediately after satisfying the need for food. In the early 1980s, farmers all over the country began to devote their savings to building houses. The saying was that “each family was in preparation; each village was under construction.” (*jiajia beiliao, cuncun dongtu*).⁴⁵ In 1980, the total floor area built was 500 million square meters and in 1981 it was more than 600 million square meters.⁴⁶ Within only two years, Chinese farmers built one square meter for each person in China.

China had no specialized land administration agency before 1986. Building rural houses was outside of the state economic plan and, thus, it flew under the radar of local governments. Generally, local governments saw no need to regulate rural housing construction—as quoted in the second rural affairs conference of the central committee of the CCP, some local government leaders said “farmers used their own money to build houses, so what was wrong with that?”⁴⁷ Local government officials also joined this trend and became a main force in rural housing development. Under the central housing

⁴⁵ Pizhuan dierci quanguo yicun fangwu jianshe gongzuo huiyi jiyao de tongzhi (批转第二次全国农村房屋建设工作会议纪要的通知) [Summary of Minutes of the Second Rural Affairs Conference] (promulgated by St. Council and Central Comm. of CCP, Jan. 7, 1982, effective Jan. 7, 1982).

⁴⁶ *Id.*

⁴⁷ *Id.*

planning system, even a city mayor could not afford a spacious apartment.⁴⁸ It would take several years to reform the urban housing sector and provide enough apartments for employees of the government and other state sectors. This unmet demand for housing could only be remedied by rural housing development. The central government publicly acknowledged that the leading role of local government officials was one main reason for this “rural housing fever” (*nongcun jianfang re*).⁴⁹ On Feb. 18, 1982, the OSC circulated an investigation report among departments of the State Council. According to this report, six central government agencies rented 310 rooms from rural hotels, 16 agencies bought or rented about 60,000 square meters of other rural housing. These houses had been used for offices, training space, dormitories, and many other uses.⁵⁰ Such transactions, although prohibited, constituted a real estate market. It was not unusual to see competition between the actions of market participants and the profit-driven behaviors of rural collectives in housing development.⁵¹

This market was not a result of intentional reform. The 1982 RRLSC stipulated that rural land *must be requisitioned* to be used in urban

⁴⁸ Zhuanfa chengxiang jianshe huanjing baohubu guanyu fujiansheng jianjiang diqu henshaluanzhan gengdi jianfangfeng de jianbao de tongzhi (转发城乡建设环境保护部关于福建省晋江地区狠刹乱占耕地建房风的简报的通知) [Forwarded Notice of the Ministry of Urban and Rural Construction and Environmental Protection on the Rural Housing Fever in Jinjiang of Fujian Province] (promulgated by the Office of the St. Council, Sept. 17, 1982, effective Sept. 17, 1982).

⁴⁹ Pizhuan dierci quanguoyicun fangwu jianshe gongzuo huiyi jiyao de tongzhi (批转第二次全国农村房屋建设工作会议纪要的通知) [Summary of Minutes of the Second Rural Affairs Conference] (promulgated by the State Council, Jan. 7, 1982, effective Jan. 7, 1982).

⁵⁰ Zhuanfa guowuyuan jiguan shiwu guanliju <Guanyu yixie guojiajiguan, shiqiye danwei zuyong zhaodaisuo he gouzushedui fangdichan wenti de diaocha baogao tongzhi> (转发国务院机关事务管理局<关于一些国家机关、企事业单位租用招待所和购租社队房地产问题的调查报告通知>)[Forwarded Notice of the Bureau of Agencies on Renting and Buying of Rural Real Estate by Some Central Government Agencies] (promulgated by Off. of the State Council, Feb. 18, 1982, effective Feb. 18, 1982).

⁵¹ *Id.*

construction and prohibited any form of buying or renting rural land.⁵² On March 21, 1986, the State Council promulgated a notice, creating the SBLA, whose main purpose was to regulate land use and prevent the waste of agricultural land.⁵³ In the same year, the NPC passed the first comprehensive land administration law in China, which took effect in 1987. The 1987 LAL, on one hand, restated the prohibition on the alienation of land. On the other hand, it permitted rural collective organizations to use rural land to cooperate with urban enterprises.⁵⁴ This measure seemed to imitate urban land use reform, which began by allowing state-owned land as a form of investment in Sino-foreign joint enterprises.⁵⁵ The 1987 LAL also permitted urban residents to build houses in rural areas, subject to the approval of the county government and the payment of fees according to the standard of governmental land requisition.⁵⁶

In the initial period of China's economic reform, Chinese farmers and their collectives developed and transferred rural land to realize its potential

⁵² RRHCA art. 2.

⁵³ Zhonggong zhongyang, guowuyuan guanyu jiaqiang tudi guanli zhizhi luanzhan gengdi de tongzhi. (中共中央、国务院关于加强土地管理、制止乱占耕地的通知) [CCP Central Comm. and State Council Notice on Strengthening Land Administration and Stopping Developing Arable Land] (promulgated by CCP Central Comm. and State Council, Mar. 21, 1986) ST. COUNCIL GAZ. Apr. 20, 1986, at 243-246, <http://www.gov.cn/gongbao/shuju/1986/gwyb198609.pdf> (China).

⁵⁴ Zhonghua renmin gongheguo tudi guanlifa. (中华人民共和国土地管理法) [Land Administration Law] (promulgated by Standing Comm. People's Cong., June 25, 1986, effective Jan. 1, 1987) (Chinalawinfo 北京大学法制信息中心) http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=2876, Dec. 29, 1988, at art. 36.

⁵⁵ See Part II.A.

⁵⁶ Zhonghua renmin gongheguo tudi guanlifa. (中华人民共和国土地管理法) [Land Administration Law] (promulgated by Standing Comm. People's Cong., June 25, 1986, effective Jan. 1, 1987) (Chinalawinfo 北京大学法制信息中心) http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=2876, Dec. 29, 1988, at art. 41.

use and commercial value, which was not much different from Chinese city governments' experiments with the commodification of urban land. Land commodification in both urban and rural areas challenged the old legal and ideological systems, but there was reason to believe that China would achieve land commodification, both in the urban and rural areas. Both the central government (as revealed in the exceptions made in the 1987 LAL) and the local governments (as revealed through their involvement with rural land development and transfer) showed willingness to tolerate farmers' development and transfer of rural land, particularly when this was done to address legitimate social and economic needs.

B. Rural Land Transfer Is Not Legalized

In 1988, the NPC passed amendments to the Constitution and the LAL. Both laws removed the prohibition on land rents and added a clause permitting the transfer of land use rights, essentially a form of land renting. The amendment to the 1988 Constitution said land use rights could be transferred according to law. The 1988 amendment to the LAL stated it more clearly—rights to use both state land and *collective* land could be transferred according to law and the State Council would make specific regulations on the transfer of land use rights. However, the added Section V, Article II of the LAL said only that the state implemented “*compensated* use of state-owned land” (*guoyou tudi youchang shiyong*) and did not mention the “*compensated* use of collective-owned land.” (*jiti tudi youchang shiyong*) In the report to the Standing Committee of NPC, the Deputy Commissioner of the Committee of Legal Affairs of the NPC, Lin Jianqing, revealed the reason:

“Regarding the use of collective land with consideration, some central government departments and local governments raised that the main task of deepening rural reform was perfecting the household responsibility system (HRS). Implementing use of collective land with consideration might alter the HRS and also raises all kinds of concrete questions; different regions are at different levels of development and have different land management systems,

which makes it hard to settle down the details of use of collective land with consideration. We could firstly experiment with collective land use reform in some places and leave the laws untouched. In this way, we can further explore and accumulate experiences to deepen rural reform.”⁵⁷

This reasoning against rural land use reform is understandable. HRS was the focus of rural reform, and perhaps overall economic reform, through the 1980s. It is widely believed that China's economic reform began with villagers' experimentation with the HRS in Xiaogang, Anhui in 1978.⁵⁸ It was first incorporated into the first No. 1 Document (*yi hao wen jian*) of the CCCC in 1982.⁵⁹ The HRS gives individual rural households relatively secure rights to farm the land they contracted from the rural collectives, and this practice has rid China, a country that experienced 30 million deaths in the famine of the Great Leap Forward, of the threat of hunger.⁶⁰ The great increase of agricultural productivity also boosted the rise of township-village enterprises and built the foundation of reform in the urban area. In the words of the CCP: “First, to eat; second, to construct” (*yi yao chi fan, er yao jian she*). Therefore, the Chinese government placed a very high priority on the security of the HRS.

⁵⁷Lin Jianqing (林涧青), Quanguo renda falü weiyuanhui dui “Zhonghua renmin gongheguo tudi guanlifa xiuzheng'an (cao'an)” shenji jieguo de baogao. (全国人大常委会对《中华人民共和国土地管理法修正案(草案)》审议结果的报告) [The Committee of Legal Affairs of the NPC Review Report of the Draft of the Land Administration Law] (promulgated by Standing Comm. People's Cong., Dec. 23, 1988) (National People's Congress of the Republic of China 全国人民代表大会) http://www.npc.gov.cn/wxzl/gongbao/2000-12/26/content_5002215.htm.

⁵⁸ Qu Futian, Nico Heerink, and Wanmao Wang, *Land Administration Reform in China: Its Impact on Land Allocation and Economic Development*, 12 LAND USE POL'Y 193-203 (1995).

⁵⁹ Yibai bashi'ernian yihao wenjian: Quanguo nongcun gongzuo huiyi jiyao. (1982 年 1 号文件: 全国农村工作会议纪要). [No. 1 Document of 1982: Summary of the National Annual Conference of Rural Affairs, promulgated Jan. 1, 1982]. (China.com.cn 中国互联网络新闻中心) http://www.china.com.cn/aboutchina/data/zgncgkzf3on/2008-04/09/content_14684460.htm, Apr. 9, 2008.

⁶⁰ Kung, James Kai-sing, & Justin Yifu Li, *The Causes of China's Great Leap Famine, 1959-1961*, 52 ECON. DEV. CULT. CHANGE 51-73 (2003).

Even in the late 1990s, the central government promulgated several regulations to protect the security of the HRS.⁶¹ Going back to 1988, during which time the HRS had only been formally recognized for less than six years, villagers' rights to the contracted land were still often violated by village collectives despite the central government's strict prohibition against such breach. Villagers were further concerned about the credibility of the central government's commitment to protecting their rights. To the Chinese government, land use reform meant land rentals by the owner. In the urban areas, the owner was the state and in the rural areas, the owner was the village collective. Implementing land use reform in rural areas would mean granting village collectives the right to transfer use rights for the rural land, most of which had been granted to individual households through the HRS. Thus rural land use reform would necessarily cause a rearrangement of rural land rights in the direction of strengthening the control of the village collectives, which would jeopardize the security of the villagers' rights to farm the contracted land. This was a risk the central government would not take.

C. The Incompatibility of Rural Land Use Reform with Urban Land Use Reform

Although the 1988 amendments of the constitution and the LAL legalized the transfer of urban land use rights, the Chinese government still needed to build a functioning land administration system. When the old system of land use in the planned economy was collapsing without a clear definition of property rights or a delineation of land administration power,

⁶¹ Guowuyuan pizhuan nongye bu guanyu wending he wanshan tudi chengbao guanxi yijian de tongzhi. (国务院批转农业部关于稳定和完善的土地承包关系意见的通知). [Notice of the Ministry of Agriculture on Maintaining and Improving Land Contracting Relationships] (promulgated by the State Council, March 28, 1995).

Zhonggongzhongguo bangongting, guowuyuan bangongting guanyu jinyibu wending he wanshan nongcun tudi chengbao guanxi de tongzhi. (中共中央办公厅、国务院办公厅关于进一步稳定和完善的农村土地承包关系的通知) [Notice on Further Maintaining and Improving Rural Land Contracting Relationships] (promulgated by the Off. of the Central Comm. of the CCP and Off. of the State Council, Aug. 27, 1997).

rural land became a limited-access commons for interested parties to grab.⁶² The chaos impacting the whole land use system was demonstrated during the 1992-93 real estate bubble.⁶³ Different types of public agencies and institutions were rushing into the real estate business. The main source of the land was rural land. Any public agency or institution could fake a need for construction, which would serve as the basis to requisition rural land, and then devote the acquired land to the real estate sector. Of course, farmers and their collectives did not hesitate to develop their land when there were profit-making opportunities.

Against this background, the SBLA and local governments tried to centralize the land administration power within their hands and eliminate any use of land outside of their control. This effort was due to both their desire to have a functioning land administration system and their financial incentives.

Local governments acutely sensed the need to monopolize land use supply. For example, early in 1989, the Fujian provincial government emphasized in a notice that city and county governments must monopolize the primary market of land use rights. In other words, rural collective-owned land must be requisitioned and converted to state-owned land in order to be transferred.⁶⁴ In 1992, the Jilin Provincial government emphasized that the land administrative agency was representative of state land ownership for the same-level government and was in charge of the requisition and transfer of

⁶² See Carol M. Rose, *The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems*, 83 MINN. L. REV. 129, 155 (1998) (A limited access commons is common on the inside, but private on the outside).

⁶³ See Part II.C.

⁶⁴ Fujiansheng renminzhengfu guanyu churang he zhuanrang guoyou tudi shiyong quanshidian zongzuo de tongzhi. (福建省人民政府关于出让和转让国有土地使用权试点工作的通知). [Notice on Experiments on the Assignment and Transfer of State-Owned Land Use Rights], (promulgated by Fujian Province People's Gov., Sept. 5, 1989) at 37.

rural land. All other agencies and institutions, including rural collective economic organizations, should not transfer land use rights directly.⁶⁵

To cool the 1992-93 real estate bubble, the SBLA promulgated an emergency notice on July 31, 1992, emphasizing that the transfer of land use rights must be highly monopolized. On November 4, 1992, the State Council promulgated a notice, providing that collectively-owned land must be officially converted to state-owned before being transferred.⁶⁶ This stipulation attempted to close the opened by the 1988 constitutional amendment that permitted the transfer of use rights of collectively-owned rural land.⁶⁷ From this notice, we can see that there is a direct link between rural and urban land use reforms. The choice was whether to allow farmers to sell rural land use rights, or to require rural land to be requisitioned before being transferred. There was no middle ground or time for delay, as once the transfer of urban land use rights created a market for land use rights, buyers would be interested in both urban and rural land. The more the urban land market grew, the more demand and speculation there would be for rural land transfer. As a result, in 1992, the State Council was forced to clarify that collectively-owned rural land must be requisitioned before being transferred. Clearly, the State Council was not ready to allow the transfer of rural land use rights.

On July 26, 1993, about one month after the burst of the real estate bubble,⁶⁸ the SBLA promulgated another notice emphasizing the *monopoly* of land sales. According to the SBLA, without the strong monopoly on land sales

⁶⁵ Jilinsheng renminzhengfu zhuanfasheng tudiguanliju guanyu jinyibu jiaqiang huabo guoyou tudi shiyong quan guanli baogao de tongzhi. (吉林省人民政府转发省土地管理局关于进一步加强划拨国有土地使用权管理报告的通知) [Notice on Strengthening Management of Assigned State-Owned Land Use Rights], (promulgated by Jilin Province People's Gov., May 3, 1992), at no. 15.

⁶⁶ Guowuyuan guanyu fazhan fangdichan ye ruogan wenti de tongzhi. (国务院关于发展房地产业若干问题的通知) [State Council on the Development of Real Estate Industry], (promulgated by the State Council, Guofa No. 61, Nov. 4, 1992.)

⁶⁷ *Id.*

⁶⁸ China Property Net, *supra* note 69.

by the government, the use of land for construction would greatly exceed the planned quota.⁶⁹ The 1993 notice clarified that the government must requisition rural land before it could be transferred.⁷⁰ It also emphasized that the development of agricultural land must be strictly controlled.⁷¹ In 1994, the State Council promulgated the Regulation on Protection of Basic Agricultural Land, which required local governments to mark some land as basic agricultural land and made the approval procedure for developing this kind of land more strict.⁷²

The efforts to protect agricultural land,⁷³ to build a uniform land administration system, and to monopolize land supply led to the comprehensive revision of the LAL in 1998.

D. 1998 LAL Revision: "The Strictest Land Use Control System in the World"

⁶⁹ Guojia tudi guanli ju guanyu jiaqiang hongguan tiaokong guan hao dichan shichang de tongzhi. (国家土地管理局关于加强宏观调控管好地产市场的通知) [SBLA Notice on Strengthening Macro Regulation of Real Estate Market] (promulgated by the State Bureau of Land Admin., Off. of the SBLA, No. 120, July 26, 1993).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See <pinyin here> 基本农田保护条例 [Regulation on Protection of Basic Agricultural Land], (promulgated by the State Council, August 18, 1994, effective Oct. 1, 1994), http://www.mlr.gov.cn/zwgk/flfg/tdglflfg/200406/t20040625_570370.htm.

⁷³ Central government leaders and policy-makers were genuinely concerned about preservation of agricultural land, which is based on the consideration that food self-sufficiency is a national security strategy that must be followed. Lester Brown's book, "Who Will Feed China? Wake-Up Call for a Small Planet," caught widespread attention and discussion in China after its publication in 1995. See Jiang Yaping (蒋亚平) & Zhang Yali (张亚莉), <pinyin here> (土地管理三大制度改革回顾及期待——访原国家土地管理局第一任局长王先进) [Review of Three Major Reforms of Land Administration: Interview with the First Director of the former State Land Administration Bureau], <pinyin here> (Chinese here) [CHINA LAND & RES. DAILY], Dec. 5, 2008.; Yang Huiping (杨慧萍), <pinyin here> (变化中国: 田凤山后的土地“变法”), [Changning China: Land Law Reform after Tian Fengshan], <pinyin here> (今日东方) [TODAY'S EAST] Dec. 1, 2003 (an interview with Professor Yan Jinmin who participated in the 1998 amendment of the LAL.).] See also Gan, *infra* note 76.

In 1997, the CCCCCP and the State Council decided to freeze non-agricultural uses of agricultural land for one year to finish the revision of the LAL.⁷⁴ According to the deputy director of the revision team, the purpose was to build “the strictest land use control system in the world” to preserve agricultural land.⁷⁵ Under the supreme goal of preserving agricultural land, the 1998 revision left little room for the transfer of rural land use rights. It revised Article II of LAL from initially reading, “[U]se rights to the state-owned land and collective-owned land can be transferred according to law” to reading, “[L]and use rights can be transferred according to law.” The intentional deletion of “collective-owned land” signaled a change of tone. The pre-revised Article II was pro-transfer of rural land use rights, subject to further legal reform, while the revised version removed that option. Furthermore, Article 43 of the 1998 LAL states:

[A]ny unit or individual that needs to use land for construction must apply for the use of state-owned land in accordance with law; however, use of collectively owned rural land for township and village enterprises, construction of village residences, or public facilities is allowed subject to approval according to law.

This article makes the *transfer* of rural land use rights for non-rural uses impossible according to law, despite the still effective 1988 constitutional amendment on land use rights. Under this article, there are only three situations in which collectively owned land can be used for construction: township and village enterprises, construction of village residences, and public facilities.

⁷⁴ <pinyin here> (中共中央、国务院关于进一步加强土地管理切实保护耕地的通知) [CCCCP and State Council on Strengthening Administration and Protection of Agricultural Land] (promulgated by the Central Committee of the CCP and the State Council) ZHONGFA No. 11 (1997), Apr. 15, 1997.

⁷⁵ Gan Cangchun (甘藏春), <pinyin here> (重温<土地管理法>的全面修订), [The Comprehensive Revision of Land Administration Law], <pinyin here> (中国法律发展评论) [6 CHINA L. DEV. COMMENTARY 38 (2011)] (Gan Cangchun led the 1998 revisions of the Land Administration Law).

Article 63 of the 1998 LAL was even clearer, stating that, “The right to use land collectively owned by farmers shall not be assigned, transferred or rented out for non-agricultural construction.”

The official interpretation of this article clearly states the purposes of the prohibition on rural land transfer:

First, allowing collectively owned rural land into the market would influence state-owned land use reform. As land market was just established in our country, the government’s regulation of the market is yet well- functioning; the real estate fever and development zone fever in previous years have created much vacant unused land; allowing collectively owned land into the market would convert more of them into construction land, creating more vacant land, which would make state-owned land use reform difficult to proceed. Second, it is for the purpose of preserving agricultural land. Township and village cadres are very enthusiastic about real estate development; without strict control there would be tons of agricultural land converted into construction land, making our purpose of preserving agricultural land difficult to achieve.⁷⁶

This interpretation clarifies why top-down rural land use reform did not lead to transferrable land use rights for farmers. The basic purposes of the land administration system, including preserving agricultural land and land supply monopoly, are in direct conflict with individual or decentralized property rights. The parties who would benefit from individual or decentralized property rights, such as villagers and their collectives, were the silent majority in the process of the top-down rural land use reform. In the making of national laws and policies, their opinions had little weight. During the 1998 LAL revision, the Office of the Standing Committee of the NPC solicited public comments on the revision draft for the first time since 1978,

⁷⁶ Interpretation of Article 63 of the 1998 Land Administration Law; see Bian, *supra* note 42.

making it a precedent to open-door legislation in the post-1978 China.⁷⁷ In the report to the Standing Committee, suggestions on the transfer of rural land use rights were divided into two main types:

Some mass suggest that allowing the transfer of rural land use rights is consistent with what's happening in reality and the market demand. Some mass think that we should not allow the transfer of rural land use rights; otherwise a lot of agricultural land would be converted to construction land and farmers' interests would be grabbed by a few people. The Committee of Legal Affairs holds that allowing rural land into the market is a very complicated issue and needs serious research and suggests we maintain the current prohibition.⁷⁸

Overall, Chinese farmers' interests in the transfer of rural land use rights were not represented in the making of national laws and policies. They remain characterized as "the masses" (*qunzhong*) who are never allowed to take care of their own interests, but whose interests should be taken care of. Compared to the local governments' overwhelming influence in making national laws and policies (as seen during the bargaining over the distribution of land revenue between the central government and local governments), Chinese farmers' influence and voices were too weak to play a role.

In the market transition, partial reforms generated arbitrage opportunities arising from rent-seeking between the liberalized sectors of the economy and those still coordinated by nonmarket mechanisms.⁷⁹ Beneficiaries of partial reform often attempt to block specific advances in the

⁷⁷ Gan, *supra* note 124; <pinyin here> (全国人大常委会办公厅关于公布土地管理法（修订草案）征求意见的通知) [Notice on Soliciting Public Opinions on the Draft of the Land Administration Law] (promulgated by the Off. of the Standing Comm. Nat'l People's Cong., Apr. 29, 1998).

⁷⁸ Li Boyong (李伯勇), <pinyin here> (全国人大常委会法律委员会关于<中华人民共和国土地管理法（修订草案）>初步审议情况的汇报) [*The Report of the Committee of Legal Affairs on the Review of the Draft of the Land Administration Law*], taken from the Third Meeting of the Standing Comm. of the Ninth NPC, June 24, 1998.

⁷⁹ Hellman, *supra* note 8, at 219.

reform process that threaten to eliminate the remaining market distortions upon which their special advantages are based. Instead of forming a constituency in support of advancing reforms, these short-term winners have often sought to stall the economy in a partial reform equilibrium that generates concentrated rents.⁸⁰

In the case of Chinese land reform, Chinese local governments benefited from the partial land use reform, i.e., a liberalized urban land market and an unreformed rural land regime. The overall purpose of land use reform was to have a unified liberalized land market, as indicated in the 1988 constitutional amendment and other official documents. Starting reform from the urban area made sense in the context of the historical background: local governments needed money for urban construction and the focus of rural reform was the household responsibility system. It was important to convince the most powerful stakeholders of the land regime—local governments—to support the reform. However, the winners of this partial reform, local governments, sought to prolong the period of partial reform because taking land from the unreformed rural sector and selling it on the liberalized urban sector were too profitable to be given up easily.

The central government and the SBLA in particular, were concerned about the preservation of agricultural land and a unified land administration system. Local governments successfully prolonged the period of partial reform by threatening the central government with the potential loss of agricultural land and the chaos of land administration that might be caused by a liberalized rural land market. These concerns, though not necessarily accurate, were well grounded and easily accepted by a central regulator. Millions of farmers did not have a say in the reform process and did not have a chance to address these concerns of the central regulator. They are disadvantaged in this partial reform, and their share of benefits is lower than in the case of complete reform. This situation begs the question: is there a way for politically-weak

⁸⁰ Hellman, *supra* note 8, at 204.

farmers to drive this reform forward against the opposition of local governments?

IV. “WEAPONS OF THE WEAK:”⁸¹ INCREASING ILLEGALITY AND INSTITUTIONAL ADAPTATION

The 1998 LAL revision consolidated the government’s monopoly on land, from which the government accumulated a huge amount of wealth. Since then, land finance (*tu di cai zheng*) has become more and more important to the Chinese government.⁸² Revenue from land sales has become a major source of local government finance. From 2003 to 2012, the Chinese government has requisitioned 37,400 square kilometers of rural land at an average price of about 30,000 to 40,000 RMB per *mu*, which was calculated according to the agricultural value of the land. The total amount of revenue from selling this land on the urban market was 15.2 trillion RMB, which has supported China’s rapid urbanization over the past years.⁸³

However, at the same time, land conflicts became the top reason behind large-scale mass incidents (*da gui mo qun ti shi jian*) in China, making headlines in both Chinese and international media. This pressed the Chinese central government to change its land regime. Most attention has been on the reform of the eminent domain regime, including specifying the definition of “public interest” for which rural land can be requisitioned and enhancing the compensation standard in rural land requisition. In 2010, the State Council promulgated the Regulations on the Requisition of Real Estate on State-

⁸¹ See JAMES SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* (1985).

⁸² Yuan Zhigang (袁志刚), <pinyin here> (土地财政的功与过) [*The Success and Failure of Land Finance*], YUAN ZHIGANG CAIXIN BLOG (Apr. 12, 2010), <http://yuanzhigang.blog.caixin.com/archives/3015>.

⁸³ Zheng Zhenyuan (郑振源), <pinyin here> (新型城镇化与中国土地制度改革) [*New Urbanization and China’s Land Reform*] [Taken from lecture minutes from Zheng Zhenyuan, Apr. 23, 2013, 7:00 pm-9:00 pm, Moot Court Room of Peking Univ. L. School] (on file with the author). Zheng Zhenyuan is a former senior official of the State Bureau of Land Administration.

Owned Land, while a corresponding regulation on the requisition of rural real estate was said to be under discussion. The effect of such efforts is still subject to the test of time.

Mass protests, however, are only a rare form of resistance that Chinese farmers take to contest for their property rights. An arguably more significant everyday form of Chinese farmers' contestation for property rights – illegal rural land development and sales – has received scant attention. This section seeks to highlight the daily illegal property arrangements Chinese farmers developed to deal with the formal land administration system and to explain how this increasing illegality jeopardizes the normal functioning of the Chinese land administration system and causes policy resistance at the beginning, but policy adaptation at the end. The following articulates two specific camouflages Chinese farmers have taken to develop and transfer rural land.

A. Township and Village Enterprises (“TVEs”)

Township and village enterprises (*xiang zhen qi ye*) emerged from the market rather than from law. Originally it was the township and village economic organizations that got involved in agriculture-related industries, such as the processing of agricultural produces. Later, their activities extended into other industry areas, such as family electronics, and beyond. Their organization and ownership structure has never been clearly defined. It used to be the township and village economic organizations that provided initial capital and equipment and organized production. Later, that control fell into the hands of individuals, mostly managers who were village cadres. TVEs were viewed as a form of socialist enterprise and were thus recognized and protected by law. Many Chinese entrepreneurs built their own enterprises under the auspices of TVEs.⁸⁴

⁸⁴ See, e.g., Wenhong Chen, *Does the Color of the Cat Matter? The Red Hat Strategy in China's Private Enterprises*, 3 MGMT. & ORG. REV. 55 (2007).

TVEs, due to their more flexible management structure, were more attuned to market demand and had a great advantage against the SOEs in the market for daily goods. TVEs were the main force of China's economic growth from the mid-1980s to 1990s. Even the 1998 LAL revision, which was intended to implement the strictest control of land use in the world, made land use by TVEs an exception to the prohibition on non-agricultural use of rural land. TVEs' land is not allowed to transfer except in the cases of merging enterprises and bankruptcy. The central government made this legal exception to promote the development of TVEs, but it has become a main way for local practices to access rural land development and transfer.

Under the TVEs, a large amount of rural land has been developed and devoted to commercial and industrial uses, and even illegally transferred to users outside of villages, resulting in huge markets for rural land.⁸⁵ Through illegal transactions, villagers were able to break the government monopoly of the land market, and promote a bottom-up institutional change. For the few Chinese local governments who experimented with granting farmers the right to transfer rural land, the prevalence of illegal transactions was a common motivation for their adaptive changes.

B. Agricultural Construction

As Article 63 of the 1998 LAL states that rural land use rights shall not be assigned, transferred or rented out for *non-agricultural* construction, many rural real estate businesses in China take the form of *agricultural* construction. One typical form of small-property construction is called Greenhouse-Farm Houses (in Chinese, “*da peng fang*,” “GFH” hereinafter). In this type of project, part of the greenhouse farms are built for storage and housing for farm employees. It is possible to get this kind of projects approved by the

⁸⁵ <pinyin here> (国土资源部土地利用司调研组：《创新制度 规范流转：集体建设用地流转调研报告》，《国土资源通讯》) [Ministry of Land Resources Bureau of Land Use, Investigation Team of the MLR Bureau of Land Use, *Innovate Institutions and Regulate Transfers: Investigation Report on Transfer of Rural Construction Land, State-Owned Land Letters*] STATE LAND RES. DISPATCH NO. 3, at 25 (2002).

government as the Chinese government has promoted agricultural investment in recent years. There has been a lot of investment activity in greenhouse farms, which are legal and provide vegetables to large cities. In Beijing, the city government has publicized over a dozen small-property neighborhoods under the name of agricultural buildings, which are called GFH, Chicken Farm Dorm (*yangjichang zhuzhailou*), Berry Garden (*caomeiyuan*), Planation Base (*zhongzhi jidi*), Fruit-Picking Orchard (*caizhai yuan*), and so on.⁸⁶

Article 43 of the 1998 LAL provides that the construction of village residences is allowed as an exception. This became another way to camouflage small property, called uniformly constructed buildings (“*tong jian lou*,” TJL hereinafter). Recently the MLR has called for farmers to live in uniformly constructed buildings, rather than individual residential houses, as a way to preserve farmland. It is also consistent with the local governments’ interests because they do not want to use their quota of construction land to build houses for farmers. Thus, village collectives often applied for construction projects under the name of TJL. However, these projects provided more than enough apartments for their villagers to live. A small portion of these units was allocated or sold at very low prices to local villagers and the rest of the units were sold to outsiders. TLJ has become the one of the main forms of small property in Shenzhen.⁸⁷ In Beijing, reports have disclosed a similar form of small property, which is called resettlement housing (“*huiqian fang*”).⁸⁸ In some government-approved projects, farmers whose land was requisitioned are authorized to build a building to be used as resettlement housing. Farmers

⁸⁶ <pinyin here> (北京公布 108 个“小产权房”已拆 25 个) [*Beijing Publicized 108 Small-Property Neighborhoods and Already Demolished 25*], <pinyin here> (Chinese) [PEOPLE’S DAILY], re-printed on SOHO.COM, Dec. 5, 2013, <http://roll.sohu.com/20131205/n391313180.shtml>.

⁸⁷ See Shitong Qiao, *Planting Houses in Shenzhen: A Real Estate Market without Legal Titles*, 29 CAN. J.L. & SOC. 253-272 (2014).

⁸⁸ Zhao Yingying (赵莹莹), <pin yin here> (小产权房变身“生态庄园”以租代售继续钻营) [*Small-Property Sales in the Camouflage of Ecological Gardens*], <pinyin here> (北京晚报) 2012 年 9 月 10 日, [BEIJING EVENING NEWSPAPER], Sept. 10, 2012.

often make use of such opportunities to expand their projects and sell apartments to make money.

C. Policy Resistance and Adaptation

This huge small-property market involves millions of farmers, middle-and-low income buyers, various kinds of real estate developers, and grassroots-level governments because small property promoted economic development of particular districts where they are located and contributed to business taxation⁸⁹ of the grassroots-level governments. For city and central governments, small-property houses also relieved them of the responsibility of providing public housing and public facilities in the peripheral area of cities, where most of the middle-and-low income population live. These combined interests make small property a serious challenge to the current land system in China.

The central government's initial response was to enforce the law. On May 6th, 1999, the Office of the State Council promulgated a notice to provincial governments and central government agencies, pointing out that illegal transactions of collectively owned land had become a serious problem and many such transactions were conducted in the name of orchards and farms. This notice states very clearly that:

Farmers' residential houses cannot be sold to urban citizens; nor to allow urban citizens to buy collectively owned land to build residential houses....

Any units or individuals should not sign land use agreements with rural collective economic organizations privately.... Agricultural and forestry projects should use land strictly according to the approved use; change to real estate development use is strictly prohibited; for legitimate needs of accompanying facilities, approval for construction land use must be obtained

⁸⁹ Companies, convenience stores and factories that use small-property houses as their official locations need to pay business taxes. The grassroots-level governments do not collect property tax from small-property owners.

according to law.⁹⁰ This notice also requires provincial governments to investigate illegal land transactions and halt approvals of orchards, farms, or tourism agricultural projects until finishing the investigation.

The responses to this notice were poor. In the following years, the central government emphasized the strict implementation and enforcement of land administration laws again and again in many notices. On December 30, 2007, the OSC promulgated a notice on the strict implementation of rural collective construction land laws and policies. It also used the term “small property” for the first time in central government notices, marking the first official recognition of the term coined by small-property market participants. It provides that “urban citizens should not buy rural residential land, farmers’ residential houses, or ‘small-property houses;’ units and individuals should not rent or occupy land collectively owned by farmers for real estate development.”⁹¹ The No. 1 Document of the CCP Central Committee of 2008, promulgated on December 31, 2007, also referred to the term “small property house” and reiterated the same prohibition as the OSC had the previous day.⁹² Since 1980, the CCCCCP has devoted its first annual official document to agricultural policy, called No. 1 Document, laying down the agenda and policies for a new year. The appearance of the term “small property” in such an important document was an indication and confirmation that it had become a national phenomenon that top policy makers could not ignore.

⁹⁰ <pinyin here> (国务院办公厅关于加强土地转让管理严禁炒卖土地的通知) [OSC on Strengthening Land Administration and Prohibition of Land Speculation] (promulgated by the Off. of the State Council, <date promulgated>, effective <effective date>) GUOBAN FA NO. 39, May 6, 1999.

⁹¹ *Id.*

⁹² <pinyin here> (中共中央、国务院关于切实加强农业基础设施建设进一步促进农业发展农民增收的若干意见) [CCCCP and State Council Opinions on Strengthening Rural Infrastructure Construction and Promoting Agriculture Development] (promulgated by the Central Comm. of the CCP and State Council, <date promulgated>, effective <effective date>) ZHONGFA NO. 1, December 31, 2007.

Meanwhile, policy reflection and change was under discussion. On January 16, 2003, the CCCCPC required local governments to encourage TVEs to use land more efficiently through transfer of collectively owned construction land and other ways.⁹³ A similar stipulation appears in the State Council Decision on Deepening Reform and Strictly Administering Land, which was issued on October 21, 2004.⁹⁴ On April 4, 2005, the State Council promulgated the Opinions of the State Council on Deepening Reform of Economic Institutions, which calls for further exploration of the market entry of rural collective-owned land use rights.⁹⁵

In early October 2008, at the Third Plenary Session of the 17th CCCPC, the rural land use reform passed a new milestone. For the first time in the history of land use reform in PRC, 20 years after the 1988 amendments of the Constitution and LAL, the Chinese central government proposed to “gradually unify the construction land use markets in urban areas and rural areas” and that “legally-acquired rural collectively-owned construction land has equal rights to state-owned land.”⁹⁶ It also emphasized that rural land use rights must be transferred through a unified and *visible* market in a *public* way, a clear indication of the central government’s concern with the *invisible* and *hidden* small-property market.⁹⁷

⁹³ <pinyin here> (中共中央国务院关于做好农业和农村工作的意见) [CCCCPC and State Council Opinions on Agricultural and Rural Affairs] (promulgated by the Central Comm. of the CCP and State Council, <date promulgated>, effective <effective date>) ZHONGFA NO. 3, Jan. 16, 2003.

⁹⁴ <pinyin here> (国务院关于深化改革严格土地管理的决定) [State Council on Deepening Reform and Strictly Managing Land] (promulgated by State Council, <date promulgated>, effective <effective date>) GUOFA NO. 28, Oct. 21, 2004.

⁹⁵ <pinyin here> (国务院关于 2005 年深化经济体制改革的意见) [State Council Opinions on Deepening Reform of Economic Institutions] (promulgated by the State Council, <date promulgated>, effective <effective date>), GUOFA NO. 9, Apr. 4, 2005.

⁹⁶ <pinyin here> (中共中央关于推进农村改革发展若干重大问题的决定) [CCCCPC Decision on Several Crucial Questions about Promoting Rural Reform] (promulgated by the Central Comm. of the CCP, <date promulgated>, effective <effective date>) ZHONGFA NO. 16, Oct. 15, 2008.

⁹⁷ *Id.*

This proposal was reiterated and reformulated as two points in the decision of the Third Plenary Session of the 18th CCCPC, promulgated on November 12, 2013: (1) establishing a unified construction land market, thus allowing rural collective construction land to be transferred in a similar manner as state-owned land; (2) granting more property rights to farmers by selecting several experimental sites and cautiously promoting the lien, mortgage and transfer of farmers' property rights to their residential houses.⁹⁸

Through the review of the policy change, we can see that the small-property market has caused formal institutional change by demonstrating the great interests embedded in a market of rural land use rights. Transferrable rural land use rights not only serve Chinese farmers' interests, but they also serve the interests of the central and local governments and of society overall. It is not to say that the central and local governments' endowed interests in the existing land system, including preservation of agricultural land and local government finance, do not matter anymore. The lack of voice and political power of Chinese farmers and their collectives was the main reason that land use reform in China has remained partial and has only benefited the winners of this reform, mainly local and central governments. This section suggests that *farmers and their collectives challenge this formal system through their everyday resistance (i.e., illegal development and transfer of rural land), sometimes under the camouflage of legal projects, and have influenced the policy agenda of land use reform. Small property is the weapon of the Chinese farmers. They are powerful because they greatly increased the costs of the whole land administration system, and they eventually proved the legal prohibition on rural land development and transfer impossible to implement.* The central government had no other choice but to reform the current system.

⁹⁸<pinyin here> (中共中央关于全面深化改革若干重大问题的决定) [Decision of the CCCPC on Several Crucial Questions about Comprehensively Deepening Reform] (promulgated by the Central Comm. of the CCP, passed during the Third Plenary Session of the Eighteenth CCCPC, November 12, 2013, effective <effective date>).

V. TOWARD A THEORY OF PROPERTY RIGHTS IN CHINA?

This paper targets three groups: scholars of China study, post-communist transition and property rights. First, to scholars of China study, it brings to light certain legal and policy changes that had not previously been fully examined and provides a comprehensive historical account and original interpretation of the Chinese land reform in the past three decades. Second, to scholars of post-communist reform, it endeavors to continue the shock therapy vs. partial reform debate, which is not only theoretically but also practically important to post-communist countries, including China and Vietnam, both of which have taken the latter approach, and Russia and the former east Europe bloc, which have taken the former approach. Moreover, half-way through the post-communist transition, we are also in a better position to evaluate the lasting reforms of both groups.

Lastly and the most importantly, to scholars of property rights, it is a case study of the evolution of property rights. There are two stories about the evolution of property rights. One is a bottom-up view and focuses on the costs and benefits of property evolution; the other is a top-down view and focuses on the political process of the evolution property rights. Contemporary discussions on the evolution of property rights began with Demsetz's seminal paper "Toward a Theory of Property Rights," which is still a starting point of most discussions in this field after almost half a century of its publication. The bottom-up or economic view of the evolution of property rights still dominates the field through continuous theoretical and empirical studies. Nevertheless, it is widely recognized that while this economic view might explain the origin of property rights well, but "cannot explain the development of complex property systems."⁹⁹

There has been increasing interests in the political process of property rights in recent years. Fitzpatrick investigates the availability and effectiveness of enforcement mechanisms to understand the property rights failure in

⁹⁹ James Krier, *Evolutionary Theory and the Origin of Property Rights*, 95 CORNELL L. REV. 139-157 (2009).

contemporary Third World circumstances.¹⁰⁰ Katz focuses on the interaction between the state and individuals and argues that the formalization of private property rights actually makes owners more vulnerable to the state and enhances the state's governance powers over them.¹⁰¹ Wyman emphasizes the political character of property rights through studying the case of New York taxicab medallions¹⁰² and the evolution of individual tradable rights in U.S. coastal fisheries.¹⁰³ As compared to the bottom-up approach, this top-down approach of property rights is still under development and more empirical and theoretical studies are needed.

To the author's knowledge, Levmore's interest group theory is to this date the most concrete one on the political process of property rights evolution, and worthy of further exploration in different backgrounds. Anderson and Hill, Epstein, and Banner have also investigated the political process of property rights in separate case studies.¹⁰⁴ Nonetheless, although the above literature recognizes the key role of the government in the evolution of property rights, it fails to investigate and incorporate the internal structure of the government and its interactions with other parties into the evolution of property rights, which are particularly crucial in understanding property reform in developing and transitional countries. Building upon the above studies, this Chinese land reform case, due to its complexity, provides a richer account of the political process of evolution of property rights.

¹⁰⁰ Daniel Fitzpatrick, *Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access*, 115 YALE L.J. 996 (2006).

¹⁰¹ Larissa Katz, *Governing Through Owners: How and Why Formal Private Property Rights Enhance State Power*, 160 U. PA. L. REV. 2029 (2012).

¹⁰² Katrina Miriam Wyman, *Problematic Private Property: The Case of New York Taxicab Medallions*, 30 YALE J. ON REG. 125 (2013).

¹⁰³ Katrina Miriam Wyman, *From Fur to Fish: Reconsidering the Evolution of Private Property*, 80 N.Y.U. L. REV. 117 (2005).

¹⁰⁴ See Terry L. Anderson & Peter J. Hill, *Cowboys and Contracts*, 31 J. LEGAL STUD. S489 (2002); Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 J. LEGAL STUD. S515 (2002); Stuart Banner, *Transitions between Property Regimes*, 31 J. LEGAL STUD. S359 (2002).